

ASSEMBLY BILL NO. 91—ASSEMBLYMAN SEGERBLOM

PREFILED JANUARY 7, 2011

Referred to Committee on Judiciary

SUMMARY—Enacts the Uniform Collaborative Law Act.
(BDR 3-60)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to collaborative law; enacting the Uniform Collaborative Law Act; establishing the requirements of a collaborative law participation agreement and the collaborative law process; establishing standards applicable to collaborative lawyers; providing that certain collaborative law communications are confidential and privileged; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill enacts the Uniform Collaborative Law Act, as amended by the National Conference of Commissioners on Uniform State Laws in 2010, and aims to standardize the most important features of collaborative law, a form of alternative dispute resolution. Currently, collaborative law has largely been practiced under private collaborative law participation agreements developed by practice groups of private attorneys.

Section 19 of this bill provides the minimum requirements for written agreements that allow parties to state their intention to resolve a matter through a collaborative law process. **Section 20** of this bill emphasizes that a party's participation in collaborative law is voluntary and specifies when and how a collaborative law process begins and concludes. **Section 21** of this bill creates a stay of proceedings before a tribunal when parties sign an agreement to attempt to resolve a matter through collaborative law. **Section 23** of this bill authorizes the approval of agreements arising out of a collaborative law process. **Sections 24-26** of this bill: (1) provide that a collaborative lawyer is disqualified from representing a party to a collaborative matter before a tribunal in a proceeding related to the collaborative matter; (2) impute the disqualification to other lawyers in a law firm with which the collaborative lawyer is associated; and (3) provide exceptions to imputed disqualification under certain circumstances if the law firm is representing



* A B 9 1 R 1 *

a low-income party for no fee or if the collaborative lawyer is representing a governmental agency.

Section 27 of this bill requires parties to disclose relevant information during the collaborative law process without formal discovery requests and to update information previously disclosed that has materially changed. **Sections 29 and 30** of this bill impose certain duties on collaborative lawyers to disclose to and discuss with a prospective party the material risks and benefits of a collaborative law process and require collaborative lawyers to screen prospective parties for any history of a coercive or violent relationship with another party. **Sections 31-34** of this bill authorize parties to agree on the scope of confidentiality of their collaborative law communications, create an evidentiary privilege for collaborative law communications and provide for certain waivers of and limited exceptions to the evidentiary privilege.

Finally, **section 35** of this bill authorizes a tribunal or other body acting in an adjudicative capacity to enforce agreements that result from a collaborative law process and to apply the disqualification provisions and the evidentiary privileges provided for in this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 38 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 37, inclusive, of this act.

Sec. 2. *Sections 2 to 37, inclusive, of this act may be cited as the Uniform Collaborative Law Act.*

Sec. 3. *As used in sections 2 to 37, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 18, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *“Collaborative law communication” means a statement, whether oral or in a record, or verbal or nonverbal, that:*

1. Is made to conduct, participate in, continue or reconvene a collaborative law process; and

2. Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

Sec. 5. *“Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.*

Sec. 6. *“Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:*

- 1. Sign a collaborative law participation agreement; and*
- 2. Are represented by collaborative lawyers.*



* A B 9 1 R 1 *

1 **Sec. 7. “Collaborative lawyer” means a lawyer who**
2 **represents a party in a collaborative law process.**

3 **Sec. 8. “Collaborative matter” means a dispute, transaction,**
4 **claim, problem or issue for resolution, including a dispute, claim**
5 **or issue in a proceeding which is described in a collaborative law**
6 **participation agreement.**

7 **Sec. 9. “Law firm” means:**

8 **1. Lawyers who practice law together in a partnership,**
9 **professional corporation, sole proprietorship, limited-liability**
10 **company or association; and**

11 **2. Lawyers employed in a legal services organization, the**
12 **legal department of a corporation or other organization, or the**
13 **legal department of a government or governmental subdivision,**
14 **agency or instrumentality.**

15 **Sec. 10. “Nonparty participant” means a person, other than**
16 **a party and the collaborative lawyer of a party, that participates in**
17 **a collaborative law process.**

18 **Sec. 11. “Party” means a person that signs a collaborative**
19 **law participation agreement and whose consent is necessary to**
20 **resolve a collaborative matter.**

21 **Sec. 12. “Person” means an individual, corporation,**
22 **business trust, estate, trust, partnership, limited-liability company,**
23 **association, joint venture, public corporation, government or**
24 **governmental subdivision, agency or instrumentality, or any other**
25 **legal or commercial entity.**

26 **Sec. 13. “Proceeding” means:**

27 **1. A judicial, administrative, arbitral or other adjudicative**
28 **process before a tribunal, including related prehearing and**
29 **posthearing motions, conferences and discovery; or**

30 **2. A legislative hearing or similar process.**

31 **Sec. 14. “Prospective party” means a person that discusses**
32 **with a prospective collaborative lawyer the possibility of signing a**
33 **collaborative law participation agreement.**

34 **Sec. 15. “Record” means information which is inscribed on**
35 **a tangible medium or which is stored in an electronic or other**
36 **medium and is retrievable in perceivable form.**

37 **Sec. 16. “Related to a collaborative matter” means involving**
38 **the same parties, transaction or occurrence, nucleus of operative**
39 **fact, dispute, claim or issue as the collaborative matter.**

40 **Sec. 17. “Sign” means, with present intent to authenticate or**
41 **adopt a record:**

42 **1. To execute or adopt a tangible symbol; or**

43 **2. To attach to or logically associate with the record an**
44 **electronic symbol, sound or process.**

45 **Sec. 18. “Tribunal” means:**



1 1. A court, arbitrator, administrative agency or other body
2 acting in an adjudicative capacity which, after presentation of
3 evidence or legal argument, has jurisdiction to render a decision
4 affecting a party's interests in a matter; or

5 2. A legislative body conducting a hearing or similar process.

6 **Sec. 19.** 1. A collaborative law participation agreement
7 must:

8 (a) Be in a record;

9 (b) Be signed by the parties;

10 (c) State the intention of the parties to resolve a collaborative
11 matter through a collaborative law process under sections 2 to 37,
12 inclusive, of this act;

13 (d) Describe the nature and scope of the collaborative matter;

14 (e) Identify the collaborative lawyer who represents each party
15 in the collaborative law process; and

16 (f) Contain a statement by each collaborative lawyer
17 confirming the lawyer's representation of a party in the
18 collaborative law process.

19 2. The parties may agree to include in a collaborative law
20 participation agreement additional provisions not inconsistent
21 with sections 2 to 37, inclusive, of this act.

22 **Sec. 20.** 1. A collaborative law process begins when the
23 parties sign a collaborative law participation agreement.

24 2. A tribunal may not order a party to participate in a
25 collaborative law process over the objection of that party.

26 3. A collaborative law process is concluded by a:

27 (a) Resolution of a collaborative matter as evidenced by a
28 signed record;

29 (b) Resolution of a part of the collaborative matter, evidenced
30 by a signed record, in which the parties agree that the remaining
31 parts of the collaborative matter will not be resolved in the
32 collaborative law process; or

33 (c) Termination of the collaborative law process.

34 4. A collaborative law process terminates:

35 (a) When a party gives notice to other parties in a record that
36 the collaborative law process is ended;

37 (b) When a party:

38 (1) Begins a proceeding related to a collaborative matter
39 without the agreement of all parties; or

40 (2) In a pending proceeding related to the collaborative
41 matter:

42 (I) Initiates a pleading, motion, order to show cause or
43 request for a conference with the tribunal;

44 (II) Requests that the proceeding be put on the
45 tribunal's active calendar; or



(III) Takes similar action requiring notice to be sent to the parties; or

(c) Except as otherwise provided in subsection 7, when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

5. The collaborative lawyer of a party shall give prompt notice to all other parties in a record of the discharge or withdrawal of the collaborative lawyer.

6. A party may terminate a collaborative law process with or without cause.

7. Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues if, not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection 5 is sent to the parties:

(a) The unrepresented party engages a successor collaborative lawyer; and

(b) In a signed record:

(1) The parties consent to continue the process by reaffirming the collaborative law participation agreement;

(2) The agreement is amended to identify the successor collaborative lawyer; and

(3) The successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

8. A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

9. A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

Sec. 21. 1. The persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties to the collaborative law participation agreement shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection 3 and sections 22 and 23 of this act, the filing operates as an application for a stay of the proceeding.

2. The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection 1 is lifted when the notice is filed. The notice must not specify any reason for termination of the process.

3. A tribunal in which a proceeding is stayed under subsection 1 may require parties and collaborative lawyers to provide a status report on the collaborative law process and the



1 *proceeding. A status report must include only information on*
2 *whether the process is ongoing or concluded. It must not include a*
3 *report, assessment, evaluation, recommendation, finding or other*
4 *communication regarding a collaborative law process or*
5 *collaborative law matter.*

6 4. A tribunal may not consider a communication made in
7 violation of subsection 3.

8 5. A tribunal shall provide the parties with notice and an
9 opportunity to be heard before dismissing a proceeding in which a
10 notice of collaborative law process is filed based on delay or
11 failure to prosecute.

12 **Sec. 22.** *During a collaborative law process, a tribunal may*
13 *issue emergency orders to protect the health, safety, welfare or*
14 *interest of a party or a member of the family or the household of a*
15 *party.*

16 **Sec. 23.** *A tribunal may approve an agreement resulting*
17 *from a collaborative law process.*

18 **Sec. 24.** 1. *Except as otherwise provided in subsection 3, a*
19 *collaborative lawyer is disqualified from appearing before a*
20 *tribunal to represent a party in a proceeding related to the*
21 *collaborative matter.*

22 2. *Except as otherwise provided in subsection 3 and sections*
23 *25 and 26 of this act, a lawyer in a law firm with which the*
24 *collaborative lawyer is associated is disqualified from appearing*
25 *before a tribunal to represent a party in a proceeding related to the*
26 *collaborative matter if the collaborative lawyer is disqualified from*
27 *doing so under subsection 1.*

28 3. *A collaborative lawyer or a lawyer in a law firm with which*
29 *the collaborative lawyer is associated may represent a party:*

30 (a) *To ask a tribunal to approve an agreement resulting from*
31 *the collaborative law process; or*

32 (b) *To seek or defend an emergency order to protect the health,*
33 *safety, welfare or interest of a party, or a member of the family or*
34 *the household of a party, if a successor lawyer is not immediately*
35 *available to represent that person.*

36 4. *A collaborative lawyer or a lawyer in a law firm with which*
37 *the collaborative lawyer is associated may represent a party, or a*
38 *member of the family or the household of a party, under*
39 *paragraph (b) of subsection 3 only until that person is represented*
40 *by a successor lawyer or reasonable measures are taken to protect*
41 *the health, safety, welfare or interest of that person.*

42 **Sec. 25.** 1. *The disqualification of a collaborative lawyer*
43 *under subsection 1 of section 24 of this act applies to a*
44 *collaborative lawyer representing a party with or without fee.*



2. After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer who is disqualified under subsection 1 of section 24 of this act is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:

(a) The party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

(b) The collaborative law participation agreement so provides; and

(c) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

Sec. 26. 1. The disqualification of a collaborative lawyer under subsection 1 of section 24 of this act applies to a collaborative lawyer representing a party that is a government or a governmental subdivision, agency or instrumentality.

2. After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or a governmental subdivision, agency or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

(a) The collaborative law participation agreement so provides; and

(b) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

Sec. 27. Except as otherwise provided by specific statute, during the collaborative law process, on the request of another party, a party shall make timely, full, candid and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall promptly update previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

Sec. 28. The provisions of sections 2 to 37, inclusive, of this act do not affect:

1. The professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or



2. The obligation of a person to report abuse or neglect, abandonment or exploitation of a child or adult under the laws of this State.

Sec. 29. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

1. Assess with the prospective party factors that the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

2. Provide the prospective party with information that the lawyer reasonably believes is sufficient for the prospective party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration or expert evaluation; and

3. Advise the prospective party that:

(a) After a collaborative law participation agreement is signed, the collaborative law process terminates if a party initiates a proceeding or seeks the intervention of a tribunal in a pending proceeding related to the collaborative matter;

(b) Participation in a collaborative law process is voluntary, and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(c) The collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by subsection 3 of section 24 of this act, subsection 2 of section 25 of this act or subsection 2 of section 26 of this act.

Sec. 30. 1. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer must make reasonable inquiry into whether the prospective party has a history of a coercive or violent relationship with another prospective party.

2. Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

3. If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer shall not begin or continue a collaborative law process unless:

(a) The party or the prospective party requests beginning or continuing the collaborative law process; and



(b) *The collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during the process.*

Sec. 31. *A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by specific statute.*

Sec. 32. 1. *Except as otherwise provided in sections 33 and 34 of this act, a collaborative law communication is privileged under subsection 2, is not subject to discovery and is not admissible in evidence.*

2. *In a proceeding, the following privileges apply:*

(a) *A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication; and*

(b) *A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.*

3. *Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.*

Sec. 33. 1. *A privilege under section 32 of this act may be waived in a record or orally during a proceeding if it is expressly waived by all parties, and in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.*

2. *A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under section 32 of this act, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.*

Sec. 34. 1. *There is no privilege under section 32 of this act for a collaborative law communication that is:*

(a) *Available to the public under chapter 239 of NRS or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;*

(b) *A threat or statement of a plan to inflict bodily injury or commit a crime of violence;*

(c) *Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or*

(d) *Set forth in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.*

2. *The privileges under section 32 of this act for a collaborative law communication do not apply to the extent that the communication is:*



1 (a) Sought or offered to prove or disprove a claim or complaint
2 of professional misconduct or malpractice arising from or related
3 to a collaborative law process; or

4 (b) Sought or offered to prove or disprove abuse, neglect,
5 abandonment or exploitation of a child or adult, unless an agency
6 which provides child welfare services, as defined in NRS
7 432B.030, or the Aging and Disability Services Division of the
8 Department of Health and Human Services is a party to or
9 otherwise participates in the collaborative law process.

10 3. There is no privilege under section 32 of this act if a
11 tribunal finds, after a hearing in camera, that the party seeking
12 discovery or the proponent of the evidence has shown the evidence
13 is not otherwise available, the need for the evidence substantially
14 outweighs the interest in protecting confidentiality and the
15 collaborative law communication is sought or offered in:

16 (a) A court proceeding involving a felony or misdemeanor; or

17 (b) A proceeding seeking rescission or reformation of a
18 contract arising out of the collaborative law process or in which a
19 defense to avoid liability on the contract is asserted.

20 4. If a collaborative law communication is subject to an
21 exception under subsection 2 or 3, only the part of the
22 communication necessary for the application of the exception may
23 be disclosed or admitted into evidence.

24 5. Disclosure or admission of evidence excepted from the
25 privilege under subsection 2 or 3 does not make the evidence or
26 any other collaborative law communication discoverable or
27 admissible for any other purpose.

28 6. The privileges under section 32 of this act do not apply if
29 the parties agree in advance in a signed record, or if a record of a
30 proceeding reflects agreement by the parties, that all or part of a
31 collaborative law process is not privileged. This subsection does
32 not apply to a collaborative law communication made by a person
33 that did not receive actual notice of the agreement before the
34 communication was made.

35 Sec. 35. 1. If a collaborative law participation agreement
36 fails to meet the requirements of section 19 of this act, or if a
37 prospective collaborative lawyer fails to comply with section 29 or
38 30 of this act, a tribunal may nonetheless find that the parties
39 intended to enter into a collaborative law participation agreement
40 if the parties:

41 (a) Signed a record indicating an intention to enter into a
42 collaborative law participation agreement; and

43 (b) Reasonably believed they were participating in a
44 collaborative law process.



2. *If a tribunal makes the findings specified in subsection 1 and the interests of justice require, the tribunal may:*

(a) *Enforce an agreement evidenced by a record resulting from the process in which the parties participated;*

(b) *Apply the disqualification provisions of sections 24, 25 and 26 of this act; and*

(c) *Apply the privileges under section 32 of this act.*

Sec. 36. *In applying and construing the Uniform Collaborative Law Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.*

Sec. 37. *Sections 2 to 37, inclusive, of this act modify, limit and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but do not modify, limit or supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. § 7003(b).*

Sec. 38. Sections 2 to 37, inclusive, of this act apply to a collaborative law participation agreement that is signed on or after January 1, 2013.

Sec. 39. This act becomes effective on January 1, 2013.

